FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE

CRIMINAL WRIT PETITION NO.347 OF 2003

Office Notes, Office Memoranda of Coram appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.S.V.Kotwal for the petitioner.

Ms.S.V.Gajare APP for the State.

Coram : R.S.Mohite,J

Date : 7.7.2006.

PC

1. Heard both sides. This is a petition for quashing the investigation in LAC No.64/2003 filed by the Shahunagar police station, Dharavi in the Court of Additional Chief Metropolitan Magistrate at Bandra, Mumbai. Yet another prayer is for compensation of Rs.5000/- for illegal detention of the petitioner on the night of 17.2.2003. However, Advocate for the petitioner states that he is not pressing this prayer. The only ground which has been urged is that the offence which is the subject matter of LAC

No.64/2003 is a non cognizable offence in respect of which the petitioner is prosecuted under Section 33 (W) (1) of the Bombay Police Act. It is contended that the said offence is non cognizable and hence no investigation could have been made in respect of such an offence and all proceedings which are pending on the basis of such unauthorised investigation cannot be sustained. On behalf of the State, an affidavit-in-reply has been filed by API Kadam. In paragraph-4 he has categorically admitted that LAC No.64/2003 is in respect of non cognizable offence. He however, states that not-with-standing that it is a non cognizable offence he has arrested the petitioner without warrant in exercise of powers under Section 81 of the Bombay Police Act. At the present movment, since prayer-(b) is not pressed, I am not concerned with the legality

of the arrest. In view of the provisions of Section 155(2) of the Code of Criminal Procedure, the police officer could not have investigated such a case without order of the Magistrate. This is not done in the present case and hence, rule will have to be made absolute in terms of prayer clauses-(a) and (c). Petition stands disposed of accordingly.

(R.S.Mohite,J)